TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 92.

DES MOINES SAVINGS BANK, PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED JULY 29, 1905.

(19,864.)

(19,864.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 92.

DES MOINES SAVINGS BANK, PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

INDEX.

	Original.	Print.
Caption	A	1
Appellant's abstract of record	B	1
Petition	1	1
Amendment to petition	2	2
Second amendment to petition	4	3
Evidence	5	4
Testimony of Simon Casady	5	4
Offers of exhibits	7	5
Exhibit 1—Assessment roll, 1902	8	5
2—Statement	9	6
3—Notice of appeal	9	6
Admission and offers	10	7
Exhibit 4—Assessment roll, 1902	12	7
6—Assessment roll, 1902	14	8
Admission	15	9
Section 20, report of code commission	15	9
Plaintiff rests	16	9
Exhibit 5—Protest	16	10
Admission	16	10
Testimony of Jacob G. Peck	17	10
Defendant rests	21	12
Offers and admissions	21	12

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 19, 1906.

	Original.	Print.
Decree	21	13
Appeal	22	13
Assignment of errors	24	14
Opinion	27	16
Judgment	29	17
Petition for writ of error	30	17
Assignment of errors	37	21
Writ of error	42	23
Citation and service	45	25
Bond	47	25
Clerk's certificate	50	26

A DES MOINES SAVINGS BANK, Plaintiff,
vs.
CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Defendant-.

B Due, timely and legal service of the within abstract is hereby acknowledged this 20 day of June A. D. 1904.
W. H. BREMNER,
M. H. COHEN,
Attorneys for Appellees.

In the Supreme Court of Iowa, September Term, A. D. 1904. In Equity.

DES MOINES SAVINGS BANK, Appellant,
vs.
CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Appellees.

Filed June 21st, 1904.
JNO. C. CROCKETT,
Clerk Supreme Court.

Appeal from Polk District Court.

Hon. James A. Howe, Judge.

Berryhill & Henry, Attorneys for Appellant.
W. H. Bremner, M. H. Cohen and R. H. Alberson, Attorneys for Appellees.

Appellant's Abstract of Record.

1 On the 29th day of April, 1902, plaintiff filed in Polk district court the following

Petition.

Plaintiff states:

Paragraph 1. That it is a corporation organized as a savings bank under the laws of the state of Iowa, having its place of business in the city of Des Moines in said state, and the defendant, the City of Des Moines, is a city of the first class, organized under the laws of said state.

Par. 2. That the assessor of the defendant city, in making up his assessment of personal property in the city of Des Moines, subject to taxation on the first day of January, 1902, assessed this plaintiff with corporation stock in the amount or value of three hundred and sixty-seven thousand, and eight hundred and twenty-seven ($367,827) dollars. In making said assessment, said assessor refused to deduct from said amount the sum of one hundred and eighty-three thousand, eight hundred and eleven and 65-100 ($183,811.65) dol-

lars, being the amount of United States bonds held by said bank as a part of its capital.

Par. 3. That said assessment so made by said assessor coming on before the city council of said city as a board of review as provided by law on the 22d day of April, 1902, plaintiff then made complaint before said board of review of the action of said assessor in making the assessment aforesaid, and demanded that said assessment be changed by deducting therefrom the sum of $183,811.65, being the amount of U. S. bonds held by it aforesaid on the first day of January, 1902, but the said board of review refused to alter or change said assessment. That on the 25th day of April, 1902, plaintiff served upon said board of review by serving Wm. H. Brereton,
2 chairman and presiding officer thereof, a notice of appeal from said action of said board of review.

Wherefore plaintiff asks that the said assessment so made against it may be changed by deducting from said assessment the said sum of $183,811.65, and that it have such other and further relief as equity may require.

BERRYHILL & HENRY,
Attorneys for Plaintiff.

(Duly verified.)

On the 12th day of October, 1903, plaintiff filed the following

Amendment to Petition.

Comes now the plaintiff and by leave of court files this amendment to its petition herein and states:

1. That the only notice to it of an assessment to it, aside from the assessment of its real estate, for the year 1902, was of an assessment for "corporation stock;" that said notice of assessment was given by the assessor of the city of Des Moines, through his deputy.

2. That in such notice there was assessed to plaintiff "corporation stock, $367,827." That such assessment was made upon such corporation stock as was then owned by the plaintiff.

3. That in truth and in fact the plaintiff owned no corporation stock in any sum or value whatever on the first day of January, 1902.

4. Plaintiff further states that the only assessment made against it by the assessor of the city of Des Moines, aside from its real estate, for the year 1902 shown in the assessment books was an assessment on personal property of a total actual value of $367,827, and of the taxable value of $91,957, and the only tax listed against the
3 plaintiff for the year 1902, aside from the tax on its real estate was a tax upon personal property of the taxable value of $91,960.

5. That the law did not permit the assessment of any personal property against this plaintiff and it had no personal property other than its capital and surplus or profits.

6. The plaintiff appeared before the city council as a board of review, as provided by law, on the 22d day of April, 1902, and then made complaint before said board of review of the action of said assessor in assessing it in the sum aforesaid.

7. That said board of review refused to alter or make any change

in such assessment and approved the assessment made by such assessor, which was either an assessment for corporation stock owned by it or other personal property owned by it and was not an assessment to it of the value of its shares of stock.

8. That on the 25th day of April, 1902, plaintiff served upon said board of review by serving Wm. H. Brereton, chairman or presiding officer thereof, a notice of appeal from the assessment made by such board of review.

Wherefore, plaintiff asks that the said assessment so made against it may be wholly set aside as illegal and void, or if that be not done, that the same be changed by taking from such assessment of $183,-811.65 as hereinbefore prayed in its original petition, with such other and further relief as equity may require.

BERRYHILL & HENRY,
Attorneys for Plaintiff.

(Duly verified.)

On the 20th day of October, 1903, plaintiff filed the following

4 *Amendment to Petition.*

Comes now the plaintiff herein and amends its petition to conform to the evidence and in addition to the matters and things set up in its original petition and in a former amendment thereto, it states:

1. That the assessment complained of, as the same appears in the assessment roll of the city assessor for the year 1902, was upon moneys and credits of the plaintiff and the law does not permit any taxation of such moneys and credits or, if such taxation is permitted, the plaintiff was entitled in the ascertainment of the value of such moneys and credits to a deduction of the United States bonds owned by it on the first day of January, 1902.

2. If the assessment in question was upon the shares of stock of the plaintiff as the property of its shareholders, then the levying of such assessment against the plaintiff and its property was in contravention of Sec. one (1), Article XIV of the amendments to the constitution of the United States in that it deprives the plaintiff of its property without due process of law, for that it subjects the property of the plaintiff to a lien and to distraint and sale for the debts of its shareholders without giving plaintiff any right of recovery back from such shareholders and regardless of whether it has any dividends or profits belonging to such shareholders.

3. That if the assessment in question is an assessment upon the shares of stock of the plaintiff, as the property of its shareholders, such assessment is in contravention of Sec. 6. Art. I and Sec. 30, Art. III of the constitution of the state of Iowa, in that no provision is made to enable such shareholders to secure a deduction from such assessment for any debts owing by them, as is allowed by law to owners of other personal property.

BERRYHILL & HENRY,
Attorneys for Plaintiff.

Thereafter, and on the 12th day of October, 1903, said day being one of the regular days of the September term, 1903, of said court, the said matter came on for hearing before Hon. James A. Howe, one of the judges of said court, and thereupon the following proceedings were had and testimony offered, introduced and adduced.

SIMON CASADY, sworn on the part of the plaintiff, testified as follows:

I am vice-president of the Des Moines Savings Bank and have been such for nearly five years. As such official, I had a personal transaction with the deputy assessor of the city of Des Moines with respect to the assessment of the property of the bank as of the 1st of January, 1902.

The paper now shown me, marked Exhibit "1," headed "Assessment roll, 1902, No. 5998," is the statement left us by such deputy assessor of the amount of taxes charged against the bank for the year 1902.

I am personally familiar with the items comprising the assets of the bank on the first of January, 1902.

Q. Did the Des Moines Savings Bank, on the 1st day of January, 1902, own any corporation stock; any stock in any other corporation?

(Objected to as incompetent and immaterial.)

A. No, sir; not that I am aware of. I have no recollection that we did. We didn't deal in any stocks of any kind or character. I think I can say that we had not. We don't buy stocks of any kind or character.

Mr. HENRY (of plaintiff's counsel): I hold in my hand a statement of the assets and liabilities of the bank January 1,
6 1902, made by myself from the books of the Bank, marked Exhibit "2." I do not want to go on the stand myself, but I would be glad to use this or have Mr. Casady upon my statement, if you are willing to admit that it is a correct statement of the totals of the various items; are you willing to do that?

Mr. COHEN (of counsel for defendant): You say you went through the books?

Mr. HENRY: Yes, sir.

Mr. COHEN: Yes, sir; it will be all right.

Q. You may read the statement through Mr. Casady, and see whether it is correct or not?

A. It would not be possible for me to remember the exact figures for that date, but I can give to you from the book that is there for any day. The list that we made out for the assessor ought to be just exactly the figures the book shows. We returned just exactly a copy of the figures on the book, and I presume those are a copy of the figures on the book.

The COURT: Statement of January 1, 1902?

Exhibit "1."

N. B.—All property must be listed at its actual cash value. Taxes are Levied on 25 per cent of same.

Assessment Roll, 1902. No. 5998

Polk County, Iowa, April 22 1902.

Address Des Moines Savings Bank

Twp., Dist. 2nd

Road Dist. No. School Dist. 4 D M

Dogs—Male, No. Female, No.

DESCRIPTION OF PERSONAL PROPERTY.

	No.	Actual Value
HORSES.		
Colts 1 year old		
" 2 " "		
Horses 3 years old and over		
Stallions		
MULES AND ASSES.		
Mules and Asses over 1 year old		
CATTLE.		
Heifers 1 year old		
" 2 " "		
Cows		
Steers 1 year old		
" 2 " "		
" 3 " and over		
Feeding Cattle		
Bulls		
MISCELLANEOUS.		
Swine over 6 months old		
Sheep " 6 "		
Goats " 6 " "		
Vehicles, including Bicycles		
Household Furniture		
Moneys and Credits from Form No. 2 (over)		
Corporation Stock		36787
Merchandise, Date of		
Capital Employed in Manufacturing		
Other Personal Property		
Total Actual Personal Property		

NEW BUILDINGS ERECTED DURING 1901.

LAND DESCRIPTION (Addition)	Sec. or Lot	Twp. or Block	R.	Actual Value	Taxable Value

The WITNESS: Yes, sir; 1902.

The figures shown in that statement, which is marked Exhibit "2" were the figures which were furnished to the assessor.

The amount of government bonds held by the bank on the 1st day of January, 1902, was $183,811.65. This represented an investment of that much of the capital of the bank at that time.

Cross-examination:

The capital stock of the bank at that time was $400,000; the surplus was $65,400 in round numbers. The bank had no shares of stock in any other corporation at that time.

(Witness excused.)

7. Plaintiff offered the printed record of the proceedings of the city council, covering the months of March and May, 1902, showing the election of William Brereton, a member of the council, as chairman *pro tem.* of the council.

Plaintiff offered in evidence so much of such printed record as showed the election of William Brereton as chairman of the board of review.

Plaintiff offered in evidence so much of such printed records as showed the approval by the city council as a board of review of the assessment made by the assessor against the Des Moines Savings Bank for the year 1902.

Plaintiff offered in evidence so much of the record of said council as showed the final adjournment of the board of review on April 29, 1902.

EXHIBIT "1."

Plaintiff offered in evidence Exhibit "1," which is as follows:

(Here follows Exhibit 1 marked p. 8.)

9 EXHIBIT "2."

Plaintiff offered in evidence Exhibit "2," which is as follows:

Statement of Des Moines Savings Bank.

January 1, 1902.

Total deposits	$4,201,386.80
Capital	400,000.00
Profit and loss	63,488.48
Profits	2,098.98
Dividends unpaid	372.00
	$4,667,346.26
Cash	$225,107.98
In banks	326,634.89
Loans	3,826,246.65
Over-drafts	7,679.48
Real estate	95,661.48
Revenue stamps	197.06
Government bonds	183,811.65
Coupon account	2,007.07
	$4,667,346.26

EXHIBIT "3."

Plaintiff offered in evidence Exhibit "3," which is as follows:

To the Honorable City Council of the City of Des Moines, as a Board of Review for the assessment of property in said city, and to William H. Brereton, chairman or presiding officer of such board:

10 You are hereby notified that the Des Moines Savings Bank of Des Moines, Iowa, has appealed to the district court of the state of Iowa in and for Polk county from the action of said city council as such board of review in assessing its corporation stock for taxation, and in over-ruling and denying the complaint made by said bank of the action of the assessor in assessing said stock.

Dated at Des Moines, Iowa, April 25, 1902.

DES MOINES SAVINGS BANK,
By BERRYHILL & HENRY,
Its Attorneys.

Service of the above notice is hereby accepted this 25th day of April, 1902.

W. H. BRERETON,
Chairman Board of Review.

Exhibit "4."

N. B.—All property must be listed at its actual cash value.
Taxes are Levied on 25 per cent of same.

Assessment Roll, 1902. No. 6573

Polk County, Iowa, Nov 9th 1902.

Address Des Moines Savings Bk Agt

Vest 5th + Walnut Twp. Dist. 2nd

Road Dist. No. School Dist. W. D. M.

Dogs—Male, No. Female, No.

DESCRIPTION OF PERSONAL PROPERTY.

	No.	Actual Value
HORSES.		
Colts 1 year old		
" 2 " "		
Horses 3 years old and over		
Stallions		
MULES AND ASSES.		
Mules and Asses over 1 year old		
CATTLE.		
Heifers 1 year old		
" 2 " "		4
Cows		
Steers 1 year old		
" 2 " "		
" 3 " " and over		
Feeding Cattle		
Bulls		
MISCELLANEOUS.		
Swine over 6 months old		
Sheep " 6 " "		
Goats " 6 " "		
Vehicles, Including Bicycles		
Household Furniture		
Moneys and Credits from Form No. 2 (over)		184.015.33
Corporation Stock		
Merchandise, Date of Inv.		
Capital Employed in Manufacturing		
Other Personal Property		
Total Actual Personal Property		

NEW BUILDINGS ERECTED DURING 1901.

LAND DESCRIPTION (Addition)	Sec. or Lot	Twp. or Block	R.	Actual Value	Taxable Value

Mr. HENRY: We will ask counsel for the city to admit, subject to their correction if they find they are wrong about it that the signature, "W. H. Brereton," as chairman of the board of review, which appears on that exhibit, is the genuine signature of W. H. Brereton.

Mr. COHEN: We will admit that is his signature as chairman of the board of review.

Assessor's Book.

Plaintiff offered in evidence from the book, marked "Assessor's Book, 1902, City of Des Moines, second district, Polk County," on double page 34, the following:

Assessment roll No. 6573. Name Des Moines Savings Bank. Address 5th and Walnut Streets.

Total value personal—

Actual value.	Taxable value.	Moneys and credits.
$367,827.00	$91,957.00	$367,827.00

Plaintiff offered from double page 174 of the tax lists of 1902 of the second district, Polk county, Iowa, personal, now being within the city of Des Moines, Iowa, the following:

11 Owner's name the Des Moines Savings Bank. Description 5th and Walnut streets.

Taxable value, personal
$91,960.00

EXHIBIT "4."

Plaintiff offered in evidence Exhibit "4," which is as follows:

(Here follows Exhibit 4 marked p. 12.)

13 Plaintiff later offered in evidence Exhibit "6," which is inserted here for convenience of comparison, being stub No. 6573 of the assessment roll for 1902 (from which Exhibit 4 was torn or separated) of the second district of the city of Des Moines, Polk count-, Iowa, and which is as follows:

EXHIBIT "6."

(Here follows Exhibit 6 marked p. 14.)

Exhibit "6."

N. B.—All property must be listed at its actual cash value.
Taxes are Levied on 25 per cent of same.

6573

Assessment Roll, 1902. No. [redacted]

Polk County, Iowa. Apr. 9th 1902.

Address Des Moines Savings Bk. Age

West 5th Walnut Twp., Dist. 2d

Road Dist. No. School Dist. W. D. M.

Dogs—Male, No. Female, No.

DESCRIPTION OF PERSONAL PROPERTY.

	No.	Actual Value
HORSES.		
Colts 1 year old		
" 2 " "		
Horses 3 years old and over		
Stallions		
MULES AND ASSES.		
Mules and Asses over 1 year old		
CATTLE.		
Heifers 1 year old		
" 2 " "		
Cows		
Steers 1 year old		
" 2 " "		
" 3 " " and over		
Feeding Cattle		
Bulls		
MISCELLANEOUS.		
Swine over 6 months old		
Sheep " 6 " "		
Goats " 6 " "		
Vehicles, including Bicycles		
Household Furniture		367 82
Moneys and Credits from Form No. 2 (over)		[illegible]
Corporation Stock		
Merchandise, Date of Inv.		
Capital Employed in Manufacturing		
Other Personal Property		
Total Actual Personal Property		

NEW BUILDINGS ERECTED DURING 1901.

LAND DESCRIPTION (Addition)	Sec. or Lot	Twp. or Block	R.	Actual Value	Taxable Value

15 The COURT: The number that appears there is the number that appears upon the assessor's book in the auditor's office?
Mr. HENRY: Yes, sir.

Admission.

It is admitted that Exhibit "4" is the notice signed by the assessor of Des Moines township, and that it was given to the Des Moines Savings Bank on or about the day that it bears date, viz.: April 9, 1902.

Plaintiff offered in evidence Sec. 20 on page 48 of the report of the code commission to the 26th General Assembly of Iowa, as follows:

SEC. 20 National state and savings banks, and loan and trust companies should be taxed on the same basis as private banks, except that the tax should be paid by the stockholders. At present national and state banks are taxed by means of taxation on the stock. (Code Sec. 818; McC. Sec. 1292 (&); 23 G. A., c. 39.) There seems to be no reason why savings banks should not be taxed in the same manner.

(Objected to as incompetent, irrelevant and immaterial.)

Plaintiff offered in evidence Sec. 20 on page 251 of the code of Iowa, as reported to the 26th General Assembly by the code commission, as follows:

SEC. 20. The shares of stock of any national state or savings bank, or loan and trust company doing business in the state, or other corporation which receives deposits or money in trust, shall be assessed to the owners thereof at the place where its principal business is transacted, the assessment to be on the real value of such shares of stock on the first day of January in each year. At the time the assessment is made, the officers of the corporation shall fur-
16 nish the assessor with a list of the stockholders, with the post-office address of and the number of shares owned by each, and he shall list to each stockholder under the head of corporation stock the total valuation of such shares. To aid the assessor in fixing the value of such shares, the corporations shall furnish him a verified statement of all matters provided in the preceding section, which shall show, separately, the amount of capital stock and the surplus and undivided earnings, and the assessor, from such statement, and any other information he can obtain, including any statement furnished to and information obtained by the auditor of state, which shall be furnished him on request, shall fix the value of such stock, taking into account the capital, surplus and undivided earnings. (1288, 1297-9, 1815, 23 G. A., c. 39.)

(Objected to as incompetent, irrelevant and immaterial.)

Thereupon the plaintiff rested.

Defendants' Evidence.

Defendants offered in evidence

EXHIBIT "5."

"Des Moines, Iowa, April 22, 1902. The Des Moines Savings Bank protests on the assessment of the shares of stock for the reason that the assessor has refused to allow deductions for the government bonds held by said bank.

(Signed) DES MOINES SAVINGS BANK,
Per SIMON CASADY, *Vice President.*"

Objected to as immaterial for any other purpose than for the purpose of showing that a protest was filed.

Admission.

It was admitted that Exhibit "5" was the only written protest filed by the Des Moines Savings Bank with the board of review
17 against the assessment in controversy in this case, and that said protest was filed on April 22, 1902, and that the signature thereto is in the handwriting of Mr. Casady. The protest being on the printed form in use at the city hall, and the written part of the body being in the handwriting of Mr. Casady.

The subject matter of such admission is objected to as incompetent, irrelevant and immaterial.

The COURT: Is this assessment in controversy the only assessment made against the Des Moines Savings Bank for the year in question?

COUNSEL FOR BOTH PARTIES: Yes, sir.

JACOB G. BECK, a witness on behalf of the defendant, testified as follows:

I was deputy assessor of the city of Des Moines for 4 years and during the year 1902.

Q. I hand you Exhibit "1," which is the assessment roll of the Des Moines Savings Bank, No. 5998, showing assessment of the corporation $367,827.00, and ask you if you made that assessment?

A. Yes, sir; I made the assessment.

Q. I will ask what the assessment was?

Objected to as incompetent, irrelevant and immaterial, and specifically because a notice cannot be varied by any statement of the witness of his conclusion or opinion.

A. It is the value of the shares of stock as near as I could come to it from the statement furnished the assessor's office by the bank.

The COURT: That notice says "corporation stock."

The WITNESS: This is the notice furnished the assessor by the county auditor.

18 Answer of the witness objected to and motion to strike out because it contradicts the notice itself and is incompetent.

I made assessments prior to the one in question.

Q. What was the custom of the assessor in making such assessments, particularly in reference to this bank, how was the assessment made in previous years? How was the assessment shown on the assessment roll?

(Objected to as incompetent, irrelevant and immaterial.)

A. They were made under the form of moneys and credits. And the first assessment made this year was made under the form of moneys and credits.

Cross-examination:

Q. You found in your experience as a deputy assessor that there were some banks that owned stock in other corporations, didn't you?

A. Yes, sir.

Q. Were you accustomed to designate that as corporation stock?

A. No, sir.

Q. How would you designate it?

A. We didn't designate it at all. They simply always asked to have it deducted and we refused to recognize the fact at all.

I got at the figures which appear on Exhibit "1" opposite the words "corporation stock" $367,827.00 in this way: We took from Exhibit "2" their capital stock $400,000.00, their profits $63,488.48, and added this together, we then deducted from that total the value of their real estate $95,661.48, and this left $367,827.00.

Q. Is that exactly the way in which the aggregate of moneys and credits in Exhibit "4" was arrived at, except that Exhibit "2"
19 shows an addition to that $184,015.35 of moneys and credits in Exhibit "4," the amount of government bonds?

A. Yes, sir.

Q. In other words, just add them together?

A. I didn't make that assessment. The government bonds is $183,118.65.

Q. That was doing what you now say was assessing the shares of stock you simply add to the total of moneys and credits as given in the previous assessment, the amount of government bonds that were held by the bank on the 1st of January?

A. I did not.

Q. What did you do?

A. I just told you what I done. I took the capital and undivided profits, deducted the real estate, and concluded that their shares were worth that much money, that they had that much money there.

Q. I am not asking you what you concluded, but what you did?

A. I did that.

Q. And $184,015.35, moneys and credits in Exhibit "4" was obtained by taking the capital and the profits and deducting therefrom the real estate and the government bonds?

A. I couldn't tell you.

Q. You can tell by adding it up yourself?

A. I can tell you whether it was done, but I didn't make that assessment, and I don't know what he done.

Q. Assuming that the total as shown in that notice of assessment was $184,015.35, did you not in making the second notice, simply add to that amount the amount of government bonds?

20 A. I couldn't say that I did.

Q. I will ask you why you would do any more than that because, when you consider the result is arrived at by adding those two figures together.

(Objected to as not proper cross examination.)

A. In other cases it might not be that way. I explain how I made that assessment, and in some cases it might not be that way.

Q. Why might it not have been that way in this case?

A. It might have been that way and it might not.

Q. You are not prepared to say it was not arrived at in that way?

A. Yes, sir; I have stated that.

Q. Why?

A. Simply because I found out from this statement as near as I could what I considered the value of their shares of stock. Then the law says, deduct their real estate, which I done, and made the assessment on that basis.

Q. Do you know how many shares there were?

A. I do not. I think there were about three thousand.

Q. You did not then arrive at the value per share of these shares of stock, did you?

(Objected to as incompetent, irrelevant and immaterial.)

A. I arrived at the aggregate value of the shares of stock because I did not have any other data to go by.

Q. And you arrived at it exactly the way you would arrive at the aggregate of moneys and credits, except in one case you would include the government bonds and in the other you did not?

A. I didn't take any government bonds into consideration in that statement at all. If they owned government bonds their stock would be actually worth what government bonds they had anyhow. That's what I considered.

21 Q. You did not then have any statement or ask for any statement as to the number of shares of stock that there were, did you?

(Objected to as incompetent, irrelevant and immaterial, and not proper cross examination.)

A. If I remember right the other statement showed that they had three thousand.

Defendant rested.

Plaintiff's Evidence in Rebuttal.

P-aintiff offered in evidence Exhibit "6," which appears in a prior *positioi* of this abstract.

It is agreed by the parties that no other stub was made out at the

time of giving the second assessment notice heretofore marked Exhibit "1."

Mr. BREMNER: The defendant admits this, but objects to the testimony as irrelevant, incompetent and immaterial. The appeal here is from the action of the board of review, and that has nothing to do with anything the assessor's office did.

Admission.

Mr. BREMNER: The defendant admits that the tax for the year 1902 growing out of the assessment in controversy has been paid by the Des Moines Savings Bank, and that the same was paid under protest, but the defendant objects to the fact itself as incompetent, irrelevant and immaterial.

Thereafter, and on the 23d day of November, 1903, the court entered in this cause the following

Decree.

Now, on this 23d day of November, 1903, being the September term of this court, this cause came on for hearing in regular order,
22 the plaintiff appearing by its attorneys, Berryhill & Henry, and the defendant by W. H. Bremner, city solicitor, after hearing the evidence and arguments of the attorneys, and being fully advised in the premises, the court finds the equities are with the defendant.

Therefore, be it ordered, adjudged and decreed that this appeal be and is hereby dismissed, and the costs of this action taxed to the plaintiff.

JAMES A. HOWE, *Judge.*

Thereafter the transcript of the testimony in the said cause was duly certified and filed in the office of the clerk of the court below. The said transcript was certified by the judge, who was presiding judge upon the trial of the said cause in the court below, and the certificate was in such form as to fully preserve and make a matter of record all of the testimony either introduced or offered on the trial of the said cause, and all proceedings had upon the trial, and all motions and objections and exceptions taken by the parties, and all rulings on the same, and all of the said matters were duly made a matter of record in the said cause.

That thereafter, and on the 12th day of February, A. D. 1904, the said evidence, including all of the evidence introduced or offered on the trial of the said cause, together with the said certificate, was filed in the office of the clerk of the said district court.

Appeal.

That thereafter, and on the 12th day of February, A. D. 1904, the said Des Moines Savings Bank duly perfected its appeal to the supreme court of Iowa from the judgment and decree of the court

below, and from all of the rulings in the court below in this
23 cause adverse to the appellant; that said appeal was duly perfected in all respects as required by law and the rules of the said supreme court and that due and legal notice of the said appeal was given and filed in the office of the clerk of the court below and that the clerk of the court below was secured his fees for a transcript.

The foregoing is a complete abstract of all of the proceedings, pleadings, evidence, motions, rulings, objections and exceptions filed or taken in the above entitled cause; and contains all of the evidence offered or introduced on the trial thereof, together with the decree of the court rendered therein, as well as the pleadings and the notice of appeal.

BERRYHILL & HENRY,
Attorneys for Appellant.

The actual cost of printing the foregoing abstract is the sum of $31.00.

BERRYHILL & HENRY,
Attorneys for Appellant.

24 I.

Assignment of Errors.

The assessor having made one assessment, of which notice was given the bank, dated April 9, 1902, the second assessment (so called) made by the deputy assessor of which notice was given the bank, dated April 22, 1902, was of no force and effect and the approval thereof by the board of review and the city council was of no effect and created no valid assessment against the bank in the absence of any fraud or concealment on the part of the bank in connection with its statement to the assessor on which his first assessment was based.

II.

There was no notice to the appellant bank or its stockholders of any assessment upon the value of its shares of stock, the only notice of any assessment being, first, a notice of an assessment upon "moneys and credits" and secondly, a notice of an assessment upon "corporation stock," whereas the law permits no other assessment in the case of a savings bank, than an assessment upon the value of its shares of stock and of its real estate.

III.

The only assessment against the appellant bank for the year in question, aside from its real estate, as shown by the "assessment roll," was an assessment of "moneys and credits," whereas the law permits no other assessment in the case of a savings bank, aside from its real estate, than an assessment upon the value of its shares of stock.

IV.

The assessment appealed from includes the bonds of the United States of America to the value of one hundred and eighty-three thousand, eight hundred eleven dollars and sixty-five cents
25 ($183,811.65) which were owned by the Des Moines Savings Bank on the first day of January, 1902, and constituted a part of the property in which its capital stock was invested, which bonds were not subject to assesment and taxation by the state of Iowa, or any of its subdivisions, and for this reason the said sum of one hundred and eighty-three thousand, eight hundred eleven dollars and sixty-five cents ($183,811.65) should be deducted from the amount of the said assessment.

V.

If, or in so far as the statutes of the state of Iowa relative to the taxation of this appellant, authorize the assessment of the bonds of the United States of America, owned by the said Des Moines Savings Bank, for taxation, and the levy of a tax upon the same, the said laws are void because in contravention of the statutes of the United States and of the provision in Section 8 of Article I of the constitution of the United States, to the effect:

'That the congress shall have power * * * to borrow money on the credit of the United States" and said Des Moines Savings Bank expressly claims the benefits and immunities of the said provision of the constitution of the United States.

VI.

If, or in so far as, Section 1322 of the code of Iowa authorizes the assessment to the Des Moines Savings Bank of the shares of the capital stock of the said bank which are the property of its shareholders, and if, and in so far as, the said section and the laws of Iowa authorize the levy of a tax against the said Des Moines Savings Bank on account of the value of the said shares, and based on said assessment, the said statutes authorize the collection from the said Des
26 Moines Savings Bank of a tax levied, not upon its property, but upon the property of others, and this constitutes a taking of the property of the said Des Moines Savings Bank without due process of law, in contravention of the provisions of Section 1 of Article XIV of the constitution of the United States, which section is as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

And the said Des Moines Savings Bank expressly sets up and claims the benefits and immunities of the said provision of the constitution of the United States.

VII.

Section 1322 of the statutes of the state of Iowa in fact requires the assessment and taxation of the property of the corporation, the Des Moines Savings Bank, and under the said section the said Des Moines Savings Bank is entitled to have deducted from the assessed value of the property in which its capital stock is invested, the amount of its government bonds; and if, and in so far as, the said section does not authorize the deduction of the value of the said bonds of the United States of America, the same is in contravention of each of the provisions of the constitution of the United States hereinbefore referred to, which are set up by the said bank and the immunities and benefits of which are expressly claimed by the said bank.

27 Supreme Court of Iowa.

Filed Dec. 17, 1904.

PEOPLES SAVINGS BANK, Appellant,
vs.
THE CITY OF DES MOINES and THE BOARD OF REVIEW OF SAID CITY, Appellees.

THE DES MOINES SAVINGS BANK, Appellant,
vs.
SAME DEFENDANTS, Appellees.

THE HOME SAVINGS BANK, Appellant,
vs.
SAME DEFENDANTS, Appellees.

Appeal from Polk District Court.

Hon. James A. Howe, Judge.

Appeal from the judgment of the district court affirming the action of the board of review of the City of Des Moines in refusing to deduct from the assessment of the appellant banks upon its shares of stock the amount of government bonds owned by them.

N. T. Guernsey, for Peoples Savings Bank.
Berryhill and Henry, for Des Moines Savings Bank.
Dale & Harvison, for Home Savings Bank.
W. H. Bremner, M. H. Cohen & R. B. Alberson, for Appellees.

28 *Per Curiam.*—This court is fully committed to the doctrine that the general exemption from state taxation with which the bonds of the United States are clothed, does not entitled the bank to deduct the amount of such bonds from the value of the shares of their stock which are assessed to it for the purpose of taxation under Code section 1322.

German Savings Bank *vs.* Burlington 118 Iowa 84.
National State Bank *vs.* Burlington 119 Iowa 696.
1st National Bank *vs.* Independence 122 Iowa 482.

We are favored by an elaborate and able argument for appellants insisting that such taxation cannot be upheld expecially as applying to savings banks, and that this position has the support of the federal supreme court whose holding in the last resort must govern the rights of the parties. These propositions were presented quite fully in the cases above cited and we are still satisfied with the conclusions their reached. Those cases have all been decided within such recent period that a rediscussion of the subject and of the bearings of the various precedents cited is not called for.

The judgment of the district court is affirmed.

29 Supreme Court of Iowa.

STATE OF IOWA, *ss:*

Be it remembered, that on the 17th day of December A. D. 1904, the following proceedings, among others, were had and entered of Record in the Supreme Court of Iowa, to wit:

Appeal from Polk District Court.

No. 23593.

DES MOINES SAVINGS BANK, Appellant,
vs.
CITY OF DES MOINES and THE BOARD OF REVIEW OF SAID CITY, Appellees.

I- this cause the Court, being fully advised in the premises, file their written opinion affirming the judgment of the District Court.

It is therefore considered by the Court that the judgment of the Court below be and it is hereby affirmed and that a writ of *procedendo* issue accordingly.

It is further considered by the Court that the appellant pay the costs of this appeal taxed at $5.75 and that execution issue therefor.

30 In the Supreme Court of the United States.

DES MOINES SAVINGS BANK, Plaintiff in Error,
vs.
CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Defendants in Error.

Petition for Writ of Error to the Supreme Court of Iowa.

To Chief Justice of the Supreme Court of Iowa:

Your petitioner, the Des Moines Savings Bank, now comes and respectfully states:

That it is and was at all the times hereinafter mentioned, a corporation duly created, organized and existing under and by virtue of the laws of the State of Iowa, for the transaction of a banking busi-

ness; and that its principal place of business is, and was at all of the times hereinafter mentioned, at the City of Des Moines in the said state.

That on or about the 9th day of April A. D., 1902, the duly elected and qualified assessor of the said city of Des Moines, who was at that time the proper person under the laws of the State of Iowa, to assess for taxation the property of the plaintiff in error, did assess for taxation the property of the plaintiff in error in the sum of $184,015.35, and that thereafter, and on or about the 22d day of April, 1902, the said assessor increased said assessment of the property of the plaintiff in error by the sum of $183,811.65, and made the assessment upon the said property of the plaintiff in error the sum of $367,827.00, instead of the sum of $184,015.35.

That the said increase of $183,811.65 in the assessment of
31 the property of the plaintiff in error was an assessment, for the purposes of taxation under the laws of the State of Iowa, of bonds of the United States of America owned by the plaintiff in error, said bonds being bonds issued by the said United States of America pursuant to the war revenue act of Congress approved June 13, 1898, (30 Statutes at large, page 488) known as coupon 3's.

That of the capital stock of the plaintiff in error there was actually invested in the said bonds, upon the date as of which under the laws of the State of Iowa, the assessments for taxation for the year A. D. 1902 were made, the sum of $183,811.65, and that the said increase in the said assessment was an assessment for the purpose of taxation of the said bonds of the United States of America, so owned by the plaintiff in error.

That after the said assessment had been so increased the plaintiff in error, in accordance with the laws of the State of Iowa in such cases made and provided, appealed to the city council of the said City of Des Moines, sitting as a board of review, or of equalization, and thereafter, and on or about the 29th day of April, 1902, the said city council, so sitting, refused to annul said increase of assessment and overruled the objections and appeal of the plaintiff in error, and confirmed and approved the said assessment in the said sum of $367,827.00.

That thereafter, in accordance with the laws of the State of Iowa, in such cases made and provided, the plaintff in error appealed from the final decision of said city council, so sitting as a board of review, or of equalization, to the district court of the State of Iowa, in and for Polk County, where said cause was tried to the court on its merits as an equity cause, without special assignments of error; and such proceedings were had therein as that, on or about the 23d day of November A. D. 1903, the said district court entered of record its
final decree in the said cause dismissing the appeal of this
32 plaintiff in error from the said assessment and confirming the same, and rendering judgment against this plaintiff in error for the costs of the said appeal; to all of which this plaintiff in error then and there at the time duly excepted. That thereafter in accordance with the laws of the State of Iowa, in such cases made and provided, this plaintiff in error appealed from said final decree of the said district court in the said matter, to the supreme court of

Iowa, the said supreme court being the highest court at law or in equity in the said state of Iowa, in which a decision could be had in said cause.

That said cause was triable *de novo* in the said supreme court of Iowa, without assignments of error, and was submitted to the said supreme court of Iowa upon what, under the rules of the said court, is known as a printed abstract of the record of said cause, which abstract contained all pleadings and papers filed therein, all evidence offered upon the trial thereof, and all rulings and orders made upon said trial in the said district court, and all proceedings had or done upon the said trial, together with the final judgment and decree rendered and entered of record in the said cause in said district court, and the taking of the appeal therefrom.

That thereafter such proceedings were had in the said cause in the said supreme court as that, after having been duly argued by counsel for both the plaintiff and defendant in error, the same was finally submitted to the said supreme court of Iowa, on the 22d day of November A. D. 1904, and thereafter and on or about the 17th day of December A. D. 1904, the said supreme court of Iowa, fined in said cause, its opinion affirming the judgment and decree of the said district court (which opinion is reported at Volume 101, Northwestern Reporter, page 867); and in pursuance of said opinion, on the 17th day of December A. D. 1904, a final judgment and decree was rendered and entered of record in the said cause by the said supreme court of Iowa, in favor of the parties hereinbefore
33 named as defendants in error, and against this plaintiff in error, affirming the said judgment and decree of the said district court and rendering judgment against this plaintiff in error for the costs upon said appeal.

That the questions submitted to the said supreme court of Iowa for decision and decided against this plaintiff in error by that court in this cause were:

First: Do the statutes of the State of Iowa in such cases made and provided, and especially section 1322 of the Code of 1897 of Iowa, require the assessment for purposes of taxation of bonds of the United States of America, constituting a part of the assets of the plaintiff in error in which its capital is invested, and are these statutes therefore void because in contravention of Section 8, Article I., of the Constitution of the United States and of the statutes of the United States?

Second: Was the assessment in controversy void because it was an assessment for taxation upon bonds of the United States of America, owned by the plaintiff in error, in contravention of the provisions of Section 8, Article I., of the Constitution of the United States, and of the statutes of the United States?

Third: Do the statutes of the State of Iowa in such cases made and provided, and especially section 1322 of the Code of 1897 of Iowa, require the assessment to the plaintiff in error, for the purposes of taxation, of the shares of its stock owned by its shareholders, and the exaction from it of the taxes on said assessments, without provision for the reimbursement of the plaintiff in error, and are these statutes therefore void, because in contravention of the provisions of

Section 1, Article XIV. of the Amendments to the Constitution of the United States that no state shall deprive any person of his property without due process of law, and that no state shall deny to any person the equal protection of the laws?

34 *Fourth:* If it be considered an assessment upon the shares of its stock owned by the shareholders of the plaintiff in error, was the assessment in question, and are the taxes levied thereon void because to assess to the plaintiff in error for the purposes of taxation the property of others and to exact from it taxes levied upon such assessments, without any provision for the reimbursement of the plaintiff in error on account of such taxes, would be to take the property of the plaintiff in error without due process of law and to deny to it the equal protection of the laws in contravention of Section 1, Article XIV., of the Amendments to the Constitution of the United States?

That the final judgment and decree so rendered by the supreme court of Iowa is unwarranted in law, as plaintiff in error is advised.

Plaintiff in error presents herewith a bond in proper form and an assignment of errors, and prays that a writ of error may be allowed so as to have a review in the supreme court of the United States of said decision, and judgment and decree of said supreme court of Iowa, and that a citation issue in due form and course to require each of the defendants above named to appear to said writ of error and show cause why such judgment of the said supreme court should not be corrected as provided by law, and the rules of this court.

DES MOINES SAVINGS BANK,
Plaintiff in Error,
By GEO. F. HENRY, *Its Attorney.*

——— ———,
Attorney for Plaintiff in Error.

STATE OF IOWA, *Polk County, ss:*

I, Geo. F. Henry, being duly sworn on oath, depose and say that I was the attorney for the plaintiff in error, the Des Moines Savings Bank, throughout all of the proceedings above referred to,

35 from the proceedings before the Board of Review to and including the final proceedings before the supreme court of the State of Iowa; that I have personal knowledge of the contents of the foregoing application for a writ of error, and that the matters and things set forth are true as I verily believe.

GEO. F. HENRY.

Subscribed and sworn to before me by the said Geo. F. Henry on this 12 day of July A. D. 1905.

[Seal of the Supreme Court of Iowa.]

H. L. BOUSQUET,
Deputy Clerk, Supreme Court of Iowa.

Writ of error allowed this 12th day of July A. D. 1905.

JOHN C. SHERWIN,
Chief Justice of the Supreme Court of Iowa.

36 [Endorsed:] In the Supreme Court of the United States. Des Moines Savings Bank *vs.* City of Des Moines and the City Council of said City as a board of review. Petition for Writ of Error. Filed Jul- 14, 1905. Jno. C. Crockett, Clerk, Supreme Court.

37 In the Supreme Court of the United States.

DES MOINES SAVINGS BANK, Plaintiff in Error,
vs.
CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, Defendants in Error.

Assignment of Errors.

Comes now the plaintiff in error, the Des Moines Savings Bank, and avers that the judgment and decree rendered by the supreme court of Iowa against the plaintiff in error in the above entitled cause on the 17th day of December A. D. 1904, is erroneous, and against the rights of the plaintiff in error; and as and for its assignment of errors upon which it relies for a review and reversal of said judgment and decree, plaintiff in error respectfully shows to the court that there is manifest error upon the face of the record, and in said judgment and decree of the supreme court of Iowa, and the record and proceedings in said cause in the following respects, to-wit:

First: That the supreme court of Iowa erred in rendering its judgment and decree affirming the assessment for taxation made against the plaintiff in error, in controversy in this cause, and affirming the said judgment and decree of the district court of the State of Iowa, in and for Polk County.

Second: That the supreme court of the State of Iowa erred in holding that the assessment complained of was not an assessment for taxation levied upon bonds of the United States which were the property of the plaintiff in error.

Third: That the supreme court of Iowa erred in holding that the bonds of the United States owned by the plaintiff in error were not exempt from taxation under the provisions of section 8,
38 Article I. of the Constitution of the United States.

Fourth: That the supreme court of Iowa erred in holding that the bonds of the United States owned by the plaintiff in error were not exempt from taxation under the provisions of section 3701 of the Revised Statutes of the United States.

Fifth: That the supreme court of Iowa erred in holding that the bonds of the United States owned by the plaintiff in error were not exempt from taxation under the provisions of the Act of Congress under which said bonds were issued, it being an act entitled, "An act

to provide ways and means to meet war expenditures and for other purposes," approved June 13, 1898.

Sixth: That the supreme court of Iowa erred in holding that the property of the shareholders of the plaintiff in error should be assessed and taxed to the plaintiff in error, without provision for its reimbursement for taxes so paid, by the owners of the property taxes, because,

(*a*) To so hold is a denial to the plaintiff in error of the equal protection of the laws, in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws.

(*b*) To subject the plaintiff in error to such taxation constitutes a taking of the property of the plaintiff in error without due process of law in contravention of the provision of the Fourteenth Amendment to the Constitution of the United States, which provides that no state shall deprive any person of his property without due process of law.

Seventh: That the supreme court of Iowa erred in holding that the assessment in question could properly be made under section 1322 of the Code of 1897, of Iowa, because:

(*a*) If the said section authorizes the assessment of bonds of the United States for purposes of taxation, the same is void because in contravention of section 8, Article I., of the Constitution of the United States.

39

(*b*) If said section authorizes the assessment, for purposes of taxation, of bonds of the United States, the same is void because in contravention of section 3701 of the Revised Statutes of the United States.

(*c*) If said section authorizes the assessment for taxation of said bonds of the United States, the same is void because in contravention of the express provisions of the Act of Congress under which said bonds were issued, it being an act entitled, "An act to provide ways and means to meet war expenditures and for other purposes," approved June 13, 1898.

(*d*) If the said section authorizes the assessment for taxation of the bonds of the United States which were sought to be assessed, the same is void because in contravention of the provision of section 1, Article XIV., of the Amendments to the Constitution of the United States that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States because under both the laws and Constitution of the United States plaintiff in error was entitled to hold the bonds in question exempt from taxation by the State of Iowa.

(*e*) If the said section authorizes the assessment against the plaintiff in error for purposes of taxation of the shares of its stock which are the property of its shareholders, and the exaction from the plaintiff in error of taxes levied upon such assessment, then the said section is void because in contravention of the provisions of Article XIV. of the Amendments to the Constitution of the United States which provides "nor shall any state deprive any person of life, lib-

erty or property without due process of law," there being no provision in the laws of the State of Iowa for the reimbursement of the plaintiff in error for taxes so exacted from it.

(*f*) If the said section authorizes the assessment against
40 the plaintiff in error for purposes of taxation of the shares of its stock which are the property of the shareholders, and the exaction from the plaintiff in error of taxes levied upon such assessment, then the said section is void because in contravention of section 1 of Article XIV. of the Amendments to the Constitution of the United States which provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." The laws of Iowa provide that all property shall be taxed to the owners thereof, and where corporations other than savings banks are made primarily liable for taxes imposed upon their shares of stock, provide for their reimbursement, but these laws make no provision for the reimbursement of savings banks on account of taxes levied against the shares of their stock and exacted from the banks.

Eighth: That the Supreme Court of Iowa erred in holding that the plaintiff in error is subject to taxation, without reimbursement, upon shares of stock not owned by it, because

(*a*) Such taxation amounts to a taking of the property of the plaintiff in error without due process of law, in contravention of the provision of Section 1, Article XIV. of the Amendments to the Constitution of the United States that no state shall deprive any person of his property without due process of law.

(*b*) Such taxation amounts to denial to the plaintiff in error of the equal protection of the laws, in contravention of the provision of section 1, of Article XIV. of the Amendments to the Constitution of the United States, that no state shall deny to any person within its jurisdiction the equal protection of the laws.

Wherefore, Plaintiff in error prays that said order and final judgment of said supreme court of Iowa be reversed with costs of suit.

Dated this 12 day of July A. D. 1905.

DES MOINES SAVINGS BANK,
Plaintiff in Error,
By GEO. F. HENRY, *Its Attorney.*

GEO. F. HENRY,
Attorney for Plaintiff in Error.

41 [Endorsed:] In the Supreme Court of the United States. Des Moines Savings Bank *vs.* City of Des Moines and the City Council of said City as a board of review. Assignment of Errors. Filed Jul- 14 1905 Jno. C. Crockett, Clerk Supreme Court.

42 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before

you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Des Moines Savings Bank, appellant, and the City of Des Moines and the City Council of said City as a board of review, appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Des Moines Savings Bank as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the
43 United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 12th day of July, in the year of our Lord one thousand nine hundred and five.

[Seal U. S. Circuit Court, Southern District, Iowa.]

EDWARD R. MASON,
Clerk of the Circuit Court of the United States for the Southern District of Iowa,
By MAZE VERNON, *Deputy.*

Allowed by
JOHN C. SHERWIN,
Chief Justice of the Supreme Court of Iowa.

Fee for writ $1.00 paid.

E. R. MASON, *Clerk,*
By MAZE VERNON, *D'p'ty.*

44 [Endorsed:] Writ of Error. Filed Jul. 14, 1905. Jno. C. Crockett, Clerk Supreme Court.

45 UNITED STATES OF AMERICA, *ss:*

To the City of Des Moines and the City Council of said City as a board of review, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of Iowa wherein the Des Moines Savings Bank is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, The Honorable John C. Sherwin, Chief Justice of the Supreme Court of Iowa this 12th day of July, in the year of our Lord one thousand nine hundred and five.

JOHN C. SHERWIN,
Chief Justice of the Supreme Court of Iowa.

On this 14th day of July, in the year of our Lord one thousand nine hundred and five, personally appeared Henry H. Griffiths before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Geo. W. Mattern, Mayor of the City of Des Moines, and to N. B. Vertrees, City Clerk of the City of Des Moines, & to Wm. H. Bremmer, attorney for the defendants in error in the court below.

HENRY H. GRIFFITHS.

Sworn to and subscribed the 14th day of July, A. D. 1905.

[Notarial Seal Geo. F. Henry, Iowa.]

GEO. F. HENRY,
Notary Public, Polk Co., Ia.

46 [Endorsed:] Citation. Filed Jul. 14, 1905. Jno. C. Crockett, Clerk Supreme Court.

Service of the within citation is hereby accepted July 14, 1905.

W. H. BREMNER,
M. H. COHEN,
R. B. ALBERSON,
City Attorneys for City of Des Moines & Attorney for City of Des Moines & the City Council of said City as a Board of Review.

47 Know all men by these presents, That we, Des Moines Savings Bank, as principal, and C. T. Cole, Jr., and Simon Casady, as sureties, are held and firmly bound unto City of Des Moines and the City Council of said City as a board of review in the full and just sum of Five Hundred (500) dollars, to be paid to the said City of Des Moines and the City Council of said City as a

board of review — certain attorney, executor-, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 12th day of July, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a term of the Supreme Court of Iowa in a suit depending in said Court between Des Moines Savings Bank, Plaintiff and the City of Des Moines and the City Council of said City as a board of review, Defendants, a judgment was rendered against the said Des Moines Savings Bank and the said Des Moines Savings Bank having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the said City of Des Moines
48 and City Council of said City as a board of review citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Des Moines Savings Bank shall prosecute its writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[Seal Des Moines Savings Bank, Des Moines, Iowa.]

DES MOINES SAVINGS BANK,
By P. M. CASADY, *Pres't.* [SEAL.]
SIMON CASADY. [SEAL.]
C. T. COLE, JR. [SEAL.]

Sealed and delivered in the presence of—
WM. W. MAISH.
R. L. CHASE, JR.
C. H. STEPHENSON.

Approved by—
JOHN C. SHERWIN,
Chief Justice of the Supreme Court of Iowa.

49 [Endorsed:] Bond. Filed Jul. 14, 1905. Jno. C. Crockett, Clerk Supreme Court.

50 STATE OF IOWA, *ss:*

I, Jno. C. Crockett, Clerk of the Supreme Court of Iowa, do hereby certify that the foregoing is a true and correct transcript of the record, opinion, and final judgment in the case of Des Moines Savings Bank, Plaintiff in Error *vs.* City of Des Moines, and the City Council of said city as a Board of Review, Defendant in Error, as full, true and complete as the same are of record and on file in my office.

I further certify that the Petition for the Writ of Error, the Assignment of Error, the Writ of Error, citation and supersedeas Bond,

with the Order of Approval to operate as a Supersedeas endorsed thereon, are hereto attached in original form, and that true and correct copies thereof have been retained in my office, and this return is made in obedience to said writ of error.

In testimony whereof, witness my signature and the seal of said Court at Des Moines, Iowa, this 14th day of July 1905.

[Seal of the Supreme Court of Iowa.]

JNO. C. CROCKETT,
Clerk of the Supreme Court of Iowa.

Endorsed on cover: File No. 19,864. Iowa Supreme Court. Term No. 92. Des Moines Savings Bank, plaintiff in error, *vs.* The City of Des Moines and The City Council of said city as a Board of Review. Filed July 29th, 1905. File No. 19,864.

FILE COPY.

Office Supreme Court, U. S.
FILED.
FEB 2 1907
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

HOME SAVINGS BANK, *Plaintiff in Error*,
vs.
CITY OF DES MOINES and THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW. } No. 82.

PEOPLE'S SAVINGS BANK, *Plaintiff in Error*,
vs.
SAME. } No. 83.

DES MOINES SAVINGS BANK, *Plaintiff in Error*,
vs.
SAME. } No. 92.

MOTION TO FIX EARLY DAY FOR FURTHER ARGUMENT OF ABOVE CAUSES.

Now come the parties to the above entitled causes respectively, and referring to the order of this honorable court of December 3d, 1906, restoring each of said causes to the docket for further argument, move the court to assign said causes for such further argument on the earliest day compatible with the convenience of the court.

W. G. HARVISON,
Attorney for Plaintiff in Error in No. 82.
N. T. GUERNSEY,
Attorney for Plaintiff in Error in No. 83.
GEO. F. HENRY,
Attorney for Plaintiff in Error in No. 92.
W. H. BREMNER,
M. H. COHEN,
Attorneys for Defendants in Error in Each Case.